

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FERRILL JOSEPH VOLPICELLI,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:10-cv-00005-LRH-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#50) for waiver of page limitation and motion (#52) to take judicial notice.

The motion to waive the page limitation for petitioner's reply will be granted. Nothing in the Court's order signifies tacit acceptance of any representation made by petitioner in the motion. The Court simply is allowing petitioner to exceed the page limit in the reply that already is on file.

In the motion to take judicial notice, petitioner initially requests that the Court "take Judicial Notice of his imprisonment record with specific reference to his current sentence structure in case CR03-1263." In his concluding prayer, he asks the Court to "order a reversal of the life sentence & adjudication of Habitual Criminal Status, as well as order his immediate release from custody." Basically, petitioner is seeking to have it declared that he has expired the sentence that he maintains that he should have been serving if his adjudication as a habitual criminal were overturned.

The motion will be denied. First, petitioner is not seeking judicial notice of facts that may be judicially noticed under Rule 201(b) of the Federal Rules of Evidence. Second, petitioner is seeking judicial notice of an alleged fact that is not even relevant at this point and may never be. Petitioner

1 currently is subject to a presumptively valid state court judgment of conviction that adjudicates him as
2 a habitual criminal and sentences him to life imprisonment. That judgment and sentence remains
3 presumptively valid unless and until this Court or a reviewing court makes a contrary determination.
4 What petitioner's sentence structure otherwise is, should be, or might be and/or the relief to which he
5 might be entitled if that judgment and sentence were overturned is an issue that might never be reached.
6 Third, the relief that petitioner seeks by the motion, immediate release from confinement, cannot be
7 obtained on a motion for judicial notice. The Court is not going to resolve disputed issues of fact and/or
8 law on a motion for judicial notice. The Court will resolve the issues in this case on the pleadings
9 currently on file, not on a frivolous motion for judicial notice.

10 The pleadings and briefing in this case are closed. Petitioner may not seek to obtain a merits
11 determination via motions filed after the reply. No further submissions will be entertained prior to a
12 final decision on the merits. Any further frivolous motions will result in a referral for consideration of
13 possible forfeiture of sentencing credits under N.R.S. 209.451(1)(d).

14 IT THEREFORE IS ORDERED that on petitioner's motion (#50) for waiver of page limitation
15 is GRANTED, such that petitioner is granted leave to exceed the page limit with regard to the reply
16 (#51) already on file.

17 IT FURTHER IS ORDERED that petitioner's motion (#52) to take judicial notice is DENIED.

18 DATED this 30th day of September, 2013.

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22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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